

Quid Novi

McGill University, Faculty of Law
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THINGS YOU'RE SURE TO
HEAR AT THE GOVERNMENT
BOOTHS AT CIVIL LAW CAREER
DAY THIS WEEK...



CAN YOU
TELL ME HOW
TO GET TO
DEILVY'S
BOOTH?
[OR]

DO YOU
VALIDATE
PARKING?
[OR]

CAN I LEAVE
MY BAG WITH
YOU WHILE I
GO TALK TO
DAVIES?



[Signature]
2004

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Editor's Note...

À la suite d'un autre accident inopportun sur le coin de Peel et Penfield, l'association des étudiants en droit de McGill a décidé d'entreprendre un recours collectif contre la Ville pour régler définitivement le danger public que représente cette intersection.

69 laptops brisés, 20 bras cassés et plusieurs hanches et épaules disloquées plus tard, les étudiants en question s'unissent aujourd'hui dans ce projet de recours qui vise non seulement une réparation des dommages encourus, mais aussi une première expérience pratique pour appliquer les notions abstraites apprises dans le monde virtuel de la Faculté.

Désireux de participer à l'évolution du droit, les étudiants se démarquent quand à leur demande de réparation. Plutôt que d'une somme monétaire, ils réclament avant tout l'ajout d'un T-bar couvert le long de Peel du métro jusqu'à la Faculté pour l'ascension de la colline, et une piste de luge du côté est de Peel pour une descente plus sécuritaire jusqu'au métro. Certains vont jusqu'à demander une masseuse en résidence à la Faculté pour combattre leurs souffrances musculaires causées par les nombreuses chutes...

Plusieurs étudiants ont déjà manifesté leur intérêt et sollicitent tous les autres qui ont été ou qui seront victimes de cette intersection, une qui ne cesse de surprendre par son efficacité méphistophélique...

Have a nice week!

Patrick*

The Path of Consent

by Adrian Picard, Aboriginal Law Association (Law II)

Tradition can be the dead faith of living people, or the living faith of dead people.

With this concept, Professor John Borrows of the University of Victoria, began his lecture at the McGill Faculty of Law this past January 14th. He argued that the interaction between aboriginal and non-aboriginal peoples in Canada was historically based on mutual consent. Indigenous legal systems also persist today, and earlier era legal agreements outlining the relationship to be built between Canadians native to this land and those with ancestors from other continents retain their validity. Professor Borrows argued that these elements present Canadian law and government with a choice. We can reject the traditional path of respect in dealing with Aboriginal justice issues, thereby continuing the attempts to eliminate the cultures and rights of Native peoples. Instead, however, we can rely upon the path of mutual consent established by the peoples of yesterday, and infuse the interaction of mainstream Canada and its Aboriginal peoples with justice and fairness.

In 1763, dozens of native groups across the eastern and central portions of British territory in North America gathered together with British officials to work out the future relationship between the colonial power and the established groups. The negotiators all chose to obtain the consent of the other parties, and forego any violent imposition of cultural, legal or governance systems.

One group, the Niagara, contributed a wampum belt to commemorate this occasion. The wampum belt is a traditional object used in many central and eastern aboriginal cultures. It is woven from hundreds of small pieces of shell, and takes the form of a broad, decorated band.

This particular belt was fashioned of three long and wide white strips, symbolizing the individual principles of peace, friendship and respect. All peoples agreed to cooperate with one other, while inhabiting contiguous territories in non-aggressive fashion.

The makers of the belt divided the white strips with narrower black lines. This arrangement symbolized a continued, and measured, separation of the treaty signatories. The British colonizers and various Aboriginal groups were to retain real sovereignty in their own affairs, and each agreed not to interfere with the governance of the other.

The wampum belt itself was more than a mere artistic symbol of the agreed-upon relationship. It constituted a form of binding contract. Along with the Royal Proclamation, drafted at the 1763 meeting, it represented the promise that each signatory consented and promised to fulfill their obligations under the agreement. The fact that both the belt (in addition to many others fashioned for the occasion) and the proclamation retained equal legal weight reinforced the premise that each people was equal to all others in the negotiations. The autonomy of each was to be fully respected for as long as the agreement remained in force – in this case, for as long as the people wanted it to.

Professor Borrows then argued that this consent – of mutual sovereignty and strategic cooperation – continues to be relevant for modern day Canadians. Common Law legal concepts used by non-Aboriginal Canadians to attack Native land and governance rights, as well as to alter Aboriginal cultural practices, all rely on the erroneous assumption that obtaining the consent of Indigenous peoples is no longer necessary. The inadequacy of those legal concepts, however demonstrates otherwise.

For example, Canada was obviously never discovered first by Europeans. As is obvious to most, a great number of Aboriginal peoples already occupied the lands claimed by early European settlers. Any powers asserted to have been created by the descendants of those early colonists through this 'discovery' should therefore be considered null.

Many people have claimed that the current occupation of Native land by non-native people extinguished Aboriginal title and rights through the doctrine of adverse possession. Such an assertion must fail because most Aboriginal peoples continue to occupy traditional lands, despite encroachment by non-Aboriginal people.

As well, claims based on adverse possession require that the possession be peaceful and that there be no objection to it. The land of British Columbia, for example, at the time it ceased to be a separate colony and joined the Confederation (1871), was inhabited by 4,000 Europeans, 5,000 Chinese, and over 40,000 Aboriginal people. This majority did not yield passively to the incoming foreigners. The land was seized. As well, Aboriginal communities have long protested this seizure. Thus it cannot

be argued successfully that adverse possession exists.

The failure of common law legal doctrines to justify the seizure of Indigenous lands, the imposition of non-Aboriginal legal authority and the assault on Aboriginal cultural identity leads Canadians back to the original path of consent established by British and Indigenous negotiators in centuries and decades past. Indigenous conceptions of justice, whether substantive, procedural or sovereign, continue to inform and guide Aboriginal communities in Canada. Sentencing circles, the give-away, the potlatch and band council-style government are only a handful of examples of how individual concepts provide independence to individual groups. With this demonstrated ability to run their own affairs, Professor Borrows argued that it is time for mainstream Canada to return to the mutually respectful notion that Aboriginal communities and nations can and should be self-governing.

In practical terms, returning to the path of consent also requires more than the creation of separate societies. More links between the two worlds need to be established. The Indian Act should be completely reformed or replaced with an alternative that better recognizes the abilities of Indigenous communities and the validity of Aboriginal legal systems. Although s. 35 of the Constitution, affirming aboriginal peoples' existing treaty and aboriginal rights, moves in the appropriate direction, it is only a half step. It is vague, and was created as a single rain drop clause in a sea of laws for all Canadians. More attention to the interests of Aboriginal peoples, as well as to their right to lead themselves, is therefore necessary.

John Borrows concluded that Canadians can allow the faiths of the past to wither and have the qualities of mutual respect, peace and friendship disappear. Such a path is possible. Yet, it will likely result in the maintenance of a difficult and often unjust relationship between the peoples of Canada. On the other hand, we can return to the path of consent and promote the faiths of our ancestors. Those traditions helped Native North Americans and non-indigenous peoples to co-exist, and also allowed for the separate societies to live as they chose. If followed, this path can help Canada recover from the unjust relationship that currently exists. ■

Obiter Dicta: De-Grade Me, Please

By Jason MacLean (Law I)

I earned my undergraduate degree at St. Francis Xavier. Perhaps you've heard of the "X-Ring" that is conferred upon graduates each year. I was one of maybe three people in my graduating class not to buy the coveted "X-ring." I was disturbed then about the commodification and fetishization of what is, at bottom, a rather pedestrian piece of metal. But it was just about impossible to have a rational conversation about the ring and what it symbolized. Doubtless for many it lacked the resonance of Marxist notions of vulgar materialism and simply represented the good and warm feeling they had for the school, which typically runs high. But as an anthropology student, the ritual surrounding the ring and its attendant discourse was fascinating, if disgusting. Graduating students would often remark that they could care less about what they were learning, or not learning, they just wanted to get their ring. The "X-ring" is basically a more expensive substitute for what undergraduates at other schools call their piece of paper, or their ticket. Many of my classmates seemed to believe the ring conferred magical, super powers (after all, just look at what befell Brian Mulroney when, for a brief while, he removed his!).

And so it goes. At McGill law, we face a decision: which discourse surrounding grades are we going to accept?

The first, and it is absolutely well-meaning, is the discourse of perspective. A grade, say in contracts, what does it mean? It represents but one evaluation on the part of one instructor on one examination on one day during one semester – a brief moment in not only one's legal education, but in one's life. All of which is to say, put it in proper perspective.

On its face, this discourse is unobjectionable enough, and regarding any one grade in any one course in any one semester, it is probably a constructive outlook. The problem, however, is that this view works only for grades considered in isolation. As a perspective on, say, your

entire first year, or on your legal education as a whole, it is not sustainable. If your average upon graduation is B-, all the perspective in the world is not going to remove what is an indelible branding of you. Try it out: the B- refers only to 100 or so credits you completed over a span of but three or four years of your life that will impact the remaining working years of your life which will in turn impact the rest of your years, so get a grip B-.

Not only is the discourse of perspective unsustainable, it paves the way for the discourse of invidious false consciousness. This will take a little unpacking. Some versions of the discourse of perspective admit that the system of grade allocation is a random. Empirical – if anecdotal – evidence of this abounds. I have heard over and over again that for the class students studied the hardest, students received their lowest mark, and vice versa. True, there are other possible readings of this curious result, but the structured randomness is, to say the least, plausible. Acknowledged or not, the grade allocation regime here is rigged. One of our professors, in a moment of reckless candor, admitted that we attend a school where "the professors have a problem with the letter A." Highly doubtful that said professor will be entrusted with the drafting of recruitment materials any time soon. The law school grade distribution regime is not an open meritocratic field.

The perspective discourse, because it is inherently unsustainable, shifts inevitably from a structural labeling discourse to an individualistic achievement discourse. Notwithstanding this arbitrary structure of grade allocation, it is incumbent upon us, over the next two months and the next two or three years to find the means of realizing our maximum potential. Heady stuff, but if realizing our peak performance is to be measured by grades, the game is over as soon as it begins. If you rely upon grades as a measure of your progress, you are relying on a measure that is neither reliable nor valid. If you

internalize the grade imposed upon you, make it your own, you in effect alienate a considerable degree of your power to define who you are. This is as true for Mr. C+ as it is for Ms. A-: both, in an arbitrary, random system, are examples of false consciousness and alienated autonomy.

Let us be foundational about this. Why do we have grades at all? Neither the perspective discourse nor the invidious false consciousness discourse defends grades pedagogically. Both discourses are, for all of their sincerely good intentions, accommodationist: they assume that the system in place has always been in place and will always be in place. Does this strike anyone as a touch tenuous (let alone self-serving), particularly at a faculty of law? Particularly at a trans-system faculty of law, one that looks beyond black letters to underlying concepts, one that purports to interrogate unquestioned assumptions? Particularly at a cosmological faculty of law, wherein students are encouraged to develop a personal culture? Wherein studying law is described, inspiringly, as a way of being alive?

If the answer is to blame the firms, that's just not going to cut it anymore. And since when did the law faculty begin working for the firms? Moreover, did the firms dictate deflationary grades at McGill all of a sudden, or does the faculty's problem with A's have another source? The problem is not with A's or B's or C's, however, but with the fetish of empty symbols. The narrow pursuit of grades encouraged by the faculty grade distribution system discourages both wider community engagement and real learning.

We have a choice before us, then: the pursuit of grades in a system where the deck is always already stacked against us and where the result means absolutely nothing, or the pursuit of knowledge and culture? It makes me think: If I were Dean... stay tuned. ■

L'Année du singe - Pour tous les immigrants...



par Shirley Wei (Law I)

Lors de mon arrivée à Montréal, je ne connaissais rien du tout du Canada. Après mon arrivée, je suis tombée amoureuse de la ville de Montréal, de l'histoire du Québec, de tout ce qu'elle symbolise, et de l'identité de son peuple. Au début, je disais souvent que je me sentais plus à l'aise à Montréal qu'à Los Angeles, d'où je viens et où j'ai grandi. Or, cinq mois après mon arrivée, j'ai décidé d'entreprendre les démarches d'immigration au Québec.

La question d'identité au Canada s'applique non seulement entre les francophones et les anglophones, mais aussi aux immigrants récents qui n'ont pas encore trouvé leurs voix pour affirmer leur propres identités. L'avenir du Québec, de sa langue, et de sa culture dépend des immigrants maintenant plus que jamais.

Grâce à ses chocolats, j'ai appris l'histoire de Laura Secord, une Américaine qui a trahi son pays en informant leurs ennemis, les Canadiens, d'une attaque américaine pendant la Guerre de 1812. Héroïne aux yeux des Canadiens, mais traîtresse aux yeux des Américains, Laura, elle aussi, est peut-être tombée amoureuse de ce pays. Nous ne sommes pas très différentes, elle et moi. Comme elle, j'ai fait le voyage toute seule au Canada, où je me sens comme jamais ailleurs comme chez moi.

Qu'est-ce qu'un Américain, au juste ? On m'avait dit que les Américains émanent une aire de confiance extraordinaire par rapport aux autres nationalités. À l'étranger, nous sommes toujours soumis à des stéréotypes vides et des critiques injustes, qui nous énervent, mais pour lesquelles nous sommes forcément désolés. Sachez que nous n'avons pas quittés notre pays pour rien – évidemment nous ne représentons pas la partie Républicaine de George W. On me demande souvent pourquoi j'ai quitté la ville privilégiée de Los Angeles, là où il fait chaud, pour venir

dans ce pays froid et inhabitable. On ne me croit pas quand je dis que grandir à Los Angeles, c'est comme grandir dans une « suburban ghetto » - un terme que j'ai inventé, d'ailleurs, pour décrire la vie à Los Angeles, où les gens passent la moitié de leurs journées dans leurs voitures de luxe, qui brillent sous le soleil lors du trajet quotidien de 60km entre le centre-ville et les banlieues. La vie facile et peu exigeante renforce une satisfaction mal informée, car ces pauvres ne connaissent que les

Walmart et les Costco qui les entourent dans la Vallée. Souvent, je me sentais prise en piège dans ma voiture sans laquelle je ne pourrais pas me déplacer et, avec laquelle, je me mets en circulation qui dure de 14h jusqu'à 20h le vendredi.

On m'avait aussi dit que les Chinois sont travailleurs, qu'ils ne posent pas de problèmes et que c'est un groupe d'immigrants idéals (par rapport à qui ?). Je trouve cette déclaration fortement insultante et fautive. Ceux qui ont vu la violence lors d'un débat politique tawainais à la télévision sauraient que les Chinois à l'origine ne sont pas du tout les petits travailleurs souriants qui ne participent pas à la politique tels qu'on connaît ici. De plus, est-ce qu'on devrait être content d'être caractérisé par l'occident comme un peuple faible physiquement, connu seulement pour leur bouffe et les jouets de mauvaise qualité avec « Made in Taiwan » ou « Made in China » dessus ? À Toronto, les immigrants chinois qui espéraient échapper le Communisme se trouvent travailler dans de gros entrepôts textiles pour les marques

canadiennes, pour \$1 l'heure. De l'autre côté à Los Angeles, la population des « Asian-Americans » (ce terme est une des « American hyphenated identities » qui n'ont pas d'équivalents en Français) ont même pris un rôle actif dans la politique et dans le média. C'est le seul aspect de LA dont je suis fière.

Pour ceux qui sont intéressés, il y a un film, qui est sorti en 2002, qui s'appelle *Better Luck Tomorrow*. Ce film reflète l'environnement de mon adolescence dans les banlieues de LA. C'est un film inspiré par un événement qui s'est passé à mon lycée et que j'avais l'occasion de voir pendant les vacances. Sans gâcher l'histoire, le film s'agit des lycéens asiatiques (mon lycée était 50% Asiatique), qui obtiennent trop facilement le succès académique, l'argent, et le « popularity ». Ils réagissent à leur ennui en commettant un crime, auquel ils échappent, mais qui en vérité résulte d'étudiants devant passer une vie entière en prison. Je pense que cette image des Asiatiques serait assez perturbante pour ceux qui pensent toujours qu'on n'est que de timides peuples qui ne dérangent personne.

Au Canada, je ne suis qu'une observatrice de la bataille politique/linguistique/culturelle entre les Franco-Canadiens et les Anglo-Canadiens. Vous les Canadiens devriez comprendre le but de cet article : L'avenir du Québec, de sa langue, et de sa culture dépend des immigrants maintenant plus que jamais. Ce jour-ci étant le premier du nouvel an chinois, je trouve l'occasion de vous montrer que moi aussi, « je me souviens » de mes racines comme vous vous souvenez des vôtres. Nous ne sommes pas très différents après tout – peut-être nous sommes tous en train de courir de nos passés vers l'inconnu, qui est notre avenir.

■

- A NON-PAID ANTI-ADVERTISEMENT DEFINITELY NOT BROUGHT TO YOU BY STIKEMAN ELLIOT -

L'Entrée sur le marché du travail: Déshumanisation?

by Finn Makela (Law III)

Freud said that the interpretation of both our dreams and our spontaneous utterances could give us insight into the subconscious attitudes that structure our conscious thoughts. A pseudo-Freudian look at last week's Quid gives us a fun example of this: the headline on page 9 reads "Fake News Story Published" – perhaps a subconscious nod to the fake news story published as a paid advertisement ("L'entrée sur le marché du travail : Discontinuité?" on page 11).

Reading the "article", it all seems too good to be true. We are told that working for Stikeman Elliot is like being in law school all over again. Apparently, one is surrounded by "authentic" colleagues in an "informal" atmosphere. Now, I have my own thoughts on big firms (see below), but first I would like to raise one small point: if working there is so stimulating, then why is it that the workload involves writing insipid puff pieces for your alma mater rather than doing, say, legal work?

In keeping with the psychoanalytic theme, allow me to lie back on the metaphoric couch and share my experience interviewing at a big firm in a major Canadian city (hint: it may or may not be Stikeman Elliot).

After some fretting over whether or not to remove my tongue piercing for the interview (they'll think I'm some kind of pervert! So what – are you afraid of who you are? Hey, that's not what I meant! It's not like you're dining with mother. What does she have to do with this?) I decided to opt for being "authentic" and leave it in. I did choose, though, to eschew "informal" and stuffed myself into a passably stylish suit and a "hey-look-mah-I'm-a-yuppie!" tie (why do you insist on bringing mother into this? Are you trying to impress the interviewers or her?).

So I arrived in the opulent lobby, checked in with the receptionist, and sat down to read a magazine. It was like a doctor's waiting room for the overlords of the ruling class – more copies of the Economist than you could wish for and no other people in sight. Almost immediately, a cheerful cardboard cutout of the perfect lawyer emerged to greet me. His teeth looked like a toothpaste ad, his hair like one of those photos you see in the salon – his suit was clearly not from Moore's. He was an exact replica of the high school jocks who used me as

a punching bag for a vigorous workout (*what does your childhood have to do with this? Maybe you hate him because you used to aspire to be like him and now you're ashamed?*). After pumping my hand repeatedly and smiling so wide the tanned skin on his face stretched tight, he led me into The Interview Room.

If you ask me, the person who set up the interview setting started early, by setting fire to puppies and sawing the heads off of Barbies. Then, after a quick diversion studying psychology and management, she (*it really was a she... this isn't some misogynist rant! Are you afraid of women? Why should I be? Don't tell me it has something to do with mother!*) went straight into the world of human resources. The Interview Room was clearly her *magnum opus*. First, there were the snacks. In the middle of the round cherry wood table was a tray with an array of cookies, juices, bottled water, etc. Each of the three interviewers had a napkin neatly placed before them, cradling a precisely half-eaten cookie and next to a precisely half-full juice. Nobody touched their cookies. Nobody offered me one. (*Should I take a cookie? Maybe they want to see if I'm assertive. No wait, maybe they want to weed out overly independent people with a sense of entitlement. Hold on, isn't that exactly what they're looking for? Take one. Don't take one. I don't know!*). I folded my hands in my lap.

If the snacks were good, the chair was a veritable *coup* of sadistic human resources engineering. You know the bad TV movies where every jealous spouse knows how to tinker with the breaks of the family car to make their partner's death look like an accident? Well, the chair was like that: an interview death trap.

"So, Finn tell us about your interest in, blah da blah platitude blah..."

"Well..." *SQUEEEEEEEK*, "...I was initially drawn to..." *SQUEEEEEEEK* "...the study of..." *SQUEEEEEEEK*.

Of course, the squeaks emanated only from my chair, and the interviewers sat smugly in their well-greased seats. In addition to squeaks, my chair also emitted a series of groans, *pfffts*, and a curious sound that I can only liken to that of an extremely large animal passing gas.

After my time in the Interview Room (a kind of brisk workout of whatever part of the brain comes up with vacuous bullshit – like a four person fencing tournament where the participants are armed with platitudes instead of foils) I was matched with an articling student to be shown around. She was dressed from head-to-toe in a beige suede pantsuit with tassels coming off the arms – like some sort of otherworldly legal cowgirl. I suppose she was illustrating how "authentic" and "casual" the workplace was. I was told, virtually without euphemism, that the purpose of the partnering was to create a false sense of intimacy so that she could tell me "the dirt" (that she was instructed to tell me) about the firm and at the same time evaluate me "in a more relaxed setting".

The tour was a whirlwind of handshaking with various cheerful technocratic clones. I was shown "the pit" where the summer and articling students were kept in a kind of tight maze of cubicles – like little legal Dilberts with permanent smiles. Then she popped The Question:

"So, Phil, err... Finn. Some law firms work for the little guys and some firms work for the big guys. We work for the big guys. I'm currently working for a client to help him kick a bunch of seniors out of their rent controlled apartments so that he can tear down the building and make a parking lot. I feel fine with it. How do you feel?"

"Well..." (*don't panic!*) "...I... err..." (*shit! I'm blowing it!*) "...guess that..." (*come on! Think of something. How would you justify your pathetic existence if you were her and you had to live with yourself?*) "...the members of the legal profession have an obligation to their clients, and everybody deserves zealous representation. It's not important whether I feel good or bad about it, but whether I'm providing the legal services that the client pays for. Presumably the adverse lawyer is working hard too – the system requires that kind of antagonism in order to..." (*oh shit! I said "antagonism"*) "...blah da blah, da liberal cliché, formulaic inanity, da blah..." (*Phew – I think I fleeced her*).

I shook hands with a few more cardboard lawyers and that was it. Needless to say, I didn't accept the offer when it came. ■

A Family Romance

by Edmund Coates (Alumnus II)

As winter stretched on, I had to decide. I had offers to study something else from a couple of Ontario universities, or I could go to McGill law school. I knew a few people at the law school, had researched it a bit, but wasn't sure that I had a grasp of its realities. For me, law school, and McGill law school in particular, stood for the formation of elites, for a certain model of success. I saw law students as people in a hurry, people looking in life for what they could get out of it for themselves.

One Friday afternoon, I walked East down Sherbrooke and up Peel's slushy hill. Near the corner of Dr Penfield, there was a gap in the school's fence. A track traced through the snow, to the front door of Old Chancellor Day Hall. This was just before prim renovations overtook the school, and so the front doors still opened to everyone.

Once inside, I explored up the staircase. The Common Room's grand shabbiness was welcoming, despite a slight draft from the long neglected windows. I looked at the pictures on the walls. A young man slumbered, stretched out on one of the brightly coloured sofas. He had taken off his shoes, so I saw the worn palms of his socks, which led to pale jeans and a forest green sweater. His brown hair was slicked straight back. Was he a law student? He was clearly at home. I looked at his fine features an instant, but then felt as if I was intruding and left.

A glass hall pointed from Old Chancellor Day Hall to New Chancellor Day Hall: the Atrium was only to sprout some months later. There was no one around. Dull black metal doors guarded the corners of the hard grey lobby of New Chancellor Day Hall. I went into the Moot Court. Dim lighting showed grey-carpeted steps, and rows and rows of low black leather seats. Cold white walls reached up to a steely maxim of Roman law.

Since I was a bit bookish, I thought that

having a look at the Law Library might reassure me. The Law Library occupied the upper floors of New Chancellor Day Hall. A notice inside the elevator door announced a contest: the person who proposed the best motto, for the entrance of the soon to be built new library, would win a night at a downtown hotel. The elevator door thudded open again. The library had a small vestibule. A low table held a few discarded books, free for the taking. There was a noticeboard, which included two or three small notices from graduating students still looking for articling positions.

Turnstiles guarded the way in or out of the library's narrow entrance. Once through, I ducked to the right, into the shelves of bound journals. At the end of the rows ran a passage, which continued along the blank wall of the photocopier room. I ducked down this short stretch and found a few rows of shelves loaded with more journals. And there he was, taking a volume off a shelf. He was about my height, had short, curly black hair, blue-green eyes, and a ready, open smile. He wore one of that year's uniforms for young middle class gays: a polo shirt that seemed one colour at first glance and a deeper colour at second glance, well-cut khaki pants, leather shoes with a certain flair. I had noticed him a few times at the Taverne du Village. Now we spoke. Was I a law student? He was in his last year, was soon to start clerking at a provincial court of appeal. He gestured me back up the corridor and into the vacant photocopier room.

We chatted about what law school was like, about hopes, dreams, and realities. Suddenly, something felt right. I looked into his eyes in silence. I saw that something felt right for him too. He took my hand in his. I squeezed it: "yes". We did not wait for the elevator. At the time, I did not even know there were bathrooms in the library. We must have held hands all the way down the stairs to the basement. I don't remember: I felt as if I was floating.

A black marker had spelled-out a warning on the white tombstone condom machine, just inside the door of the Pit's mensroom: "worst gum I've ever tasted". His hand pulled mine deeper, around the corner to the furthest stall. His hand let go, tore a square of toilet paper, and used it to snap closed the latch on the door.

For a while, my life had mostly been a line, drawn by a sometimes-shaky hand across a flat page. For a moment, the page was magnified a hundred times, and had a surface as rich, awful, artificial, and intense as the most florid Petri dish. He was good with words.

Later, sitting together on the edge of a table in the Pit, we exchanged a few thanks. When we had met in the library, I had felt shy, uncertain. Now, our shared moment of stillness, of tenderness, lingered in the air between us. I did not want to risk shattering this connection by seeming greedy. So I waited, for what would seem just the right moment to offer my 'phone number, but the moment never came. We parted. If I had been in a more familiar environment, if I had had more courage, if I had given him my 'phone number, would he have called me? Could we have shared something further? I never saw nor heard from him again.

Odd, that I did not end up going to law school. But I still think, from time to time, of the man I met there, and of what he gave me as a free gift. I remember New Chancellor Day Hall as a place of generosity after all, as a place where I was surprised by happiness.

[Note: the *Criminal Code* specifies, at article 173 (1): "Every one who wilfully does an indecent act (a) in a public place in the presence of one or more persons, ... is guilty of an offence punishable on summary conviction". Article 150 adds that: "In this Part, ... "public place" includes any place to which the public have access as of right or by invitation, express or implied; ".] ■

Seven Deadly Sins

by Sylvia Boss (Law I)

There's a **funky speaker series** going on at McGill Law this year. It's entitled "**Les sept péchés capitaux et le droit privé**", and yes, the title speaks for itself. You know the sins – now what's their connection to the law?

Like **law**, **envy** emerges from **contact with the other**. The envier creates a world-view, "**a huge defensive life-style**", to quote Prof. Drummond, that hinges on (the absence of) a quality she feels she doesn't have. The implication of this finding for conflict resolution could be tremendous.

Another **sin** with modern legal reverberations is **gluttony**. As brilliantly expounded by Prof. Desmond Manderson, **gluttony** is a capital sin

because it points to other malfunctions. Its modern name is "**addiction**", a form of *wanting* that isn't based on actually *liking*. Our capitalist societies and the legal orders that underpin them provide a **banquet of examples** of this "sin". Its **prime feature** is to reduce everything to a common sensation, a common normativity, and this, in turn, **pervades modern Western thinking**.

The picture of an **Aquinas** so "**hungry for knowledge**" that he was never sated and could barely get up to **excrete** is exemplary of a glutton. But our attitude to **knowledge** is not the only one that bears that stamp. (**Drugs**, along with some taboos, may be one of the last major exceptions to

the **all-consuming pall** of regulatory normalization.) We're also gluttons when it comes to **sex**. And with respect to **otherness**. Whether the **otherness is animal or vegetable**, or the **North/South** type, our legal mind-set reflects the **blind distinction** "Us v. I", "Us v. Them". Following that reduction, we've erected the **right to instrumentalise** the entire planet to our, **gluttonous, needs**.

The **next talk in the series** promises to be no less stimulating – in a *like, not want, sort of way*. This is your chance, o English contracts people, to hear our beloved Prof. Belley, the insightful new head of the Private Comparative Law Institute, talk about "**Pride**" (& The Corporation). He will be accompanied by none other than UofT's reknowned "**Avarice**" expert, Jean-François Gaudreault-Desbiens. The series kicks off again this **Friday, January 30, 2004, at 11:30 in room 202.** ■

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The Pen-tium Is Mightier Than...

By Philippe Alma (Law I)

I don't know about yours, but mine is long and stiff. What, pray tell, am I talking about? My pen, of course, though I'm not surprised you didn't recognize my description given that the therapeutic rolling of a biro in our classrooms has been replaced with the clatter of a keyboard. When I look around my first-year lectures I observe a sea of computer screens. At first I thought that computers would be the bane of the class, but in fact they have contributed in numerous ways to the improvement of our law school education. Here are just a few examples of the benefits of laptops in class.

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Back in the summer I never would have thought to praise the laptop for its heat-generating capacity, but now that the temperature is straying a little too far south of zero, laptops are not just handy, they're essential. Short of wheeling in a burnt out oil drum, filling it with combustibles, and setting it ablaze, there seems to be no other means of heat in Chancellor Day Hall other than the trusty laptop. When all the heat for the building is funnelled into two rooms (the games room, and one of the second floor rooms) thus fulfilling the BTU output quota for the month, the rest of the faculty is left to freeze in the other rooms. Now, thanks to our computers, the remedy for cold hands is no further than the CPU fan of the closest Dell (though Toshibas are warmer).

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Another means of self-improvement is available during particularly high instances of the *Gates-Groan effect*. I am delighted when people take the opportunity to touch up their latest work of computer art. The sight of 15 or so screen filled with cubist bitmaps, expressionist *jpegs*, and other masterpieces is awe-inspiring. I am tempted to get people to submit their works of art and create a web-based virtual gallery. We even have a bit of avant-garde art courtesy of the guy who occasionally draws nudie pictures! We are truly blessed. The only avenue for improvement, if I may be bold, would be to work on the musical dimension of the classroom. Wouldn't the lecture be more exciting if instead of the banal Windows start up tune we heard some James Brown? How about a little Rolling Stones action? I can dig it.

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D-League Glory!

by Kirsten Mercer (Law 1)

It's hard to know what to say about the Force Majeure game last Sunday afternoon. Faithful readers of the Quid Sports Section will be relieved to hear that the team extended their win streak yet again, with a 2-0 victory in the scheduled game against the Lobotomizers. Following a minor injury to winger Rob Israel, the team rallied, producing two quick goals. The first was scored only seconds after Rob's unfortunate collision with the boards by his linemate Pierre Covo. Though it ultimately would not be needed, and insurance goal scored by Neil Horner would put us safely ahead.

Unfortunately, minutes before the end of the first period, in a valiant effort a Lobotomizer forward tripped on a break-away, colliding with the boards behind the Force's net. Sam, the injured player, needed medical attention, and the game was called.

In all seriousness, I know that I speak for the entire team when I say that we wish Sam a full and quick recovery.

With a little ice time left, the Force decided to take on one of the teams scheduled to play in the next time slot. And frankly, that was when the real game of the day began! It was just a "Friendly Game," and the Force was in well above their depth playing a team ranked two leagues their superior. But what followed could only be described as intramural greatness, and the best play this coach has seen all year! I mean the players actually played their positions, the dump and hustle programme for which the team has become known involved dumping and actually hustling, the shifts were short and sweet (okay, short and exhausting... And probably only short because the players were exhausted... but I digress.)

In the end, the Force incredibly held their opponents to a 0-0 tie. Now some might argue that this was due in large part to the fact that the Force had twice as many players as their opponents, but not me... Nope... For me, it was what's known in sports as "playing up," or raising the level of play to match the other (theoretically superior) team. And now that I know that they can play like that, I expect to see it every game!

Now I'm not saying that the Force is ready for Prime Time... (Though if the theory of "playing up" holds, I think the Force should try and get some ice time at the Forum, and see if they can't teach the Habs a thing or two...) I think the players would agree that without some serious time at the gym that level of play is not sustainable. But for a few moments, Force Majeure touched D-league glory, and it was really something to see!

The next Force Majeure game will be Monday Jan. 26th at 21:30. Come out and glimpse glory for yourself!

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Analyse

by Marc-André Séguin (Law I)

Laissez-moi d'abord commencer en disant que je me sens agréablement surpris de voir que mon premier texte dans le Quid ait suscité un aussi grand débat. Plusieurs personnes s'y sont jointes pour venir exprimer leurs points de vue, même le très honorable Professeur Tetley. Ces gens sont venus s'exprimer soit directement dans le Quid ou bien lors de conversations informelles que j'ai pu avoir. Ces débats, comme je l'ai déjà dit, sont le signe d'une saine démocratie.

De la même façon, je ne peux qu'être fier de voir qu'un débat que j'ai partiellement créé réussisse à faire ressortir l'étroitesse d'esprit de certaines gens, qui se bornent à de vieux réflexes envers l'idéologie souverainiste.

Bien qu'il soit fort louable d'avoir une société bilingue et voire même polyglotte, il reste que face à la masse immense et aux courants dominants des cultures anglophones nord-américaines, le danger de voir la culture francophone (ainsi que celle des enfants de la loi 101, et de toutes les autres communautés culturelles dites « Québécoises ») ne devenir rien d'autre qu'un triste folklore est très présent.

M. Iacovelli nous est revenu, ironiquement, avec une seconde réplique, malgré que dans son premier texte du mois de novembre il affirmait clairement : « *Marc-André Séguin's article is not worthy of a reply but I will dignify it with one* ». De toute apparence, il me faisait maintenant tout un honneur non seulement en me faisant cadeau d'un second texte, mais en me transformant cette fois en un sujet d'étude ! Je trouve toujours étonnant qu'une personne qui puisse écrire « arrêtons les guéguerres et laissons tomber nos rancunes » ait trouvé le temps, pendant les Fêtes, de penser et réaliser un article bondé de si grands mots.

Sans vouloir tomber dans les attaques personnelles, je tenterai une réponse, aussi claire que possible, adressée à ces « sages détenteurs de la vérité » qui semblent rechercher avec tant de vigueur tous les méfaits du diable bleu souverainiste.

Dans son « analyse », M. Iacovelli me faisait plusieurs reproches, notamment celui d'une approche grossière vis-à-vis l'histoire.

Notre Faculté est bondée d'étudiants brillants capables de nuances. Pour ces étudiants, il était clair que dans mon premier texte je ne visais pas l'ensemble de la communauté anglophone en soulignant divers actes d'arrogance et de mépris à travers l'histoire. J'ai voulu montrer, avec sources de l'époque à l'appui, des actes méprisants à l'égard des Canadiens-français ayant contribué à l'émergence d'un mouvement nationaliste. Je ne me sentais pas dans le besoin de préciser que ce n'était pas TOUS les anglophones qui étaient sympathisants concernant les actes haineux dont j'avais fait mention. Cependant, des sources historiques telles que divers articles du journal anglophone montréalais *The Gazette* de l'époque (qui, à un certain moment, est même allé jusqu'à suggérer le nettoyage ethnique) nous montrent qu'il y avait un important nombre de sympathisants à ces actes, et je voulais ainsi montrer qu'il était probable et justifié que dans un tel environnement, un francophone puisse se sentir attaqué, méprisé. Bien entendu, dans sa

nous « divisant comme un abîme » qui n'existent pas.

Mon ton inutilement alarmiste quand je disais que le mouvement souverainiste soit, entre autres, motivé par un désir de protection face au risque de l'assimilation.

Avec son grand amour aveugle pour le Canada et notre « ère postmoderne », M. Iacovelli semble vouloir ignorer plusieurs faits. Il existe en effet un danger d'assimilation pour la population francophone au Québec, et ceci ne s'applique pas seulement aux Québécois de souche, mais aussi aux enfants de la loi 101, etc. Bien qu'il soit fort louable d'avoir une société bilingue et voire même polyglotte, il reste que face à la masse immense et aux courants dominants des cultures anglophones nord-américaines, le danger de voir la culture francophone (ainsi que celle des enfants de la loi 101, et de toutes les autres communautés culturelles dites « Québécoises ») ne devenir rien d'autre qu'un triste folklore est très présent. Et si M. Iacovelli ne veut pas me croire, de peur de

reconnaître la véracité des dires d'un soi-disant « démagogue », peut-être osera-t-il méditer sur les analyses que tire M. Charles Castonguay, Professeur à l'Université d'Ottawa, sur la question :

Dans le domaine privé, le recensement [de 2001] permet de constater avec précision que l'anglais domine toujours nettement le français comme

langue commune dans les couples linguistiquement mixtes à Montréal. La faiblesse du français sur ce plan est encore plus évidente dans la région métropolitaine de Gatineau.

Le recensement n'offre, en revanche, qu'une information partielle sur la langue commune publique. Les données de 2001 révèlent néanmoins la force démesurée de l'anglais vis-à-vis du français comme langue principale de travail à Montréal, qui traduit sans doute un avantage de l'anglais sur le français dans les situations de contact entre travailleurs de langues différentes. La supériorité de l'anglais dans ce domaine est plus tranchée encore à Gatineau.

[...] Il existe ainsi un écart considérable entre la force réelle du français en situation de contact sur le terrain et le discours officiel voulant que le français soit la langue commune de la société québécoise.

[...] [I]l semble que l'avantage de l'anglais sur le français dans le monde du travail à Montréal et dans l'univers connexe ►

furie « anti-bleus », M. Iacovelli n'a pas fait preuve d'une telle capacité à faire des nuances.

Une autre des armes de guerre dans la croisade de M. Iacovelli était d'associer l'idéologie souverainiste (ou du moins la mienne) avec le nationalisme ethnique et ce pour deux raisons :

Je ne qualifiais pas, dans mon premier texte, les Anglophones de « Québécois ».

M. Iacovelli ne semble pas avoir noté que, dans ce même texte, je n'ai pas non plus fait référence aux Francophones comme étant des « Québécois ». Au contraire, je leur faisais référence comme étant soit des Francophones, soit des CANADIENS-français. Ce faisant, je n'excluais ni les anglophones, ni les francophones de la société québécoise, mais je cherchais plutôt à y distinguer deux groupes en particulier pour des fins de clarté dans mon texte. Bien qu'il veuille me faire passer pour un vulgaire nationaliste ethnique, M. Iacovelli devrait tâcher de faire plus attention quand il tente de trouver des nuances

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Next Human Rights Workshop: Theorizing Human Rights: A Critique of the Language we Use

Adriana Greenblatt

Mark Antaki, a Research Fellow here at the Faculty of Law, will be leading our next human rights workshop entitled "Theorizing Human Rights". The workshop will present us with a more critical perspective on the "human rights" discourse. Mark is an excellent speaker and this workshop promises to be challenging!

Mark Antaki is currently a Research Fellow at the McGill Faculty of Law, and is completing his Ph.D. in the Jurisprudence and Social Policy Program at the University of California, Berkeley. His dissertation undertakes a "Genealogy of Crimes Against Humanity."

The John Peters Humphrey Human Rights Workshop Series is a series designed to enhance law students' human rights advocacy skills and complement our legal education. Each session is comprised of a one-hour presentation and a one-hour interactive exercise that takes the form of either a debate, discussion or role-playing. It is a fun, unique way to learn about topics we don't get the chance to explore in class in an uncompetitive environment. All are welcome!

When: 12:30-2:30, Wednesday, January, 28th, Room 101

To register, please send an email to Howie at: howiekislowicz@yahoo.ca

Preparatory materials are now available at the library circulation desk.

des cégeps et des universités fasse contrepoids à la francisation comme langue de scolarisation.¹

Et concernant le très joli commentaire que M. Iacovelli nous tire en disant : « Les Québécois sont intelligents et savent s'arranger très bien avec la richesse d'avoir deux identités, québécoise et canadienne », je me demande s'il réussirait à dire de même pour les communautés franco-ontariennes vivant à St-Joachim, à Windsor ou à Welland. Je me demande s'il oserait prononcer ces mêmes jolies paroles à Penetanguishine ou à Sturgeon Falls, toutes des communautés en Ontario où on continue de mener une lutte pour avoir ou conserver des écoles françaises

dans un acte ultime de défense contre des taux alarmants d'anglicisation. Comme la langue est le plus grand véhicule pour une culture, ce sont là plusieurs franco-ontariens qui perdent chaque année une part de leur identité dans la masse dominante. Si les francophones au Québec ne veulent pas perdre cette part de leurs racines, et vivre ce que les minorités francophones vivent partout sur le continent, nous devons agir. Et si M. Iacovelli veut utiliser cette dernière phrase pour me traiter à nouveau de nationaliste ethnique, ce sera parce qu'il n'a toujours pas compris que le « nous » du Québec « postmoderne » est un « nous » inclusif, auquel peuvent se joindre toutes les personnes et toutes les communautés. Le mode de pensée voulant

que l'utilisation du « nous » ait un caractère isolationniste et diviseur relève d'une mentalité archaïque et dépassée.

De plus, si j'utilise le terme « assimilation », c'est que j'entends bien parler du risque de se fondre dans un ordre social dominant. Je ne sais pas quel genre de synonyme M. Iacovelli voudrait que je donne au lieu du terme « assimilé ». Si je me fie au *Dictionnaire des synonymes* de Robert, dictionnaire « couronné par l'Académie française », certains des synonymes seraient : plié à, rompu à, dressé, apprivoisé, façonné... Bref, je ne trouve pas de jolies expressions politiquement correctes et enrobées de sucre telles que M. Iacovelli aimerait entendre. Je ne trouve aucun ►

terme qui viendrait apporter de l'harmonie aux fragiles oreilles d'une personne ne voulant pas entendre les sirènes alarmantes d'une culture qui lutte contre son déclin.

Un autre des reproches de M. Iacovelli est qu'il doute que je puisse croire que l'assimilation d'un Anglophone québécois puisse menacer la culture québécoise. En réponse à son doute, je ne peux que dire que ce dernier est un scénario impossible. Pour illustrer cette impossibilité, je crois que ce fut un ancien chroniqueur avant-gardiste au journal *The Gazette* du nom de Albert Neremberg qui sut le mieux la décrire : « *In North America, francophones are afraid of drowning in a sea of anglos, while anglophones in Québec are afraid of drowning in a bathtub of French* ». Cette comparaison ne veut que montrer que la crainte d'un francophone face à l'assimilation est réelle, alors que celle d'un anglophone au Québec dans un tel scénario est fictive, car ce dernier n'est pas membre d'une minorité, mais d'une communauté bien plus grande : celle de la population anglophone nord-américaine. M. Iacovelli propose donc un scénario fictif, où une telle assimilation n'est pas possible.

Enfin, M. Iacovelli fait mention du Canada comme étant une des fédérations les plus « flexibles et décentralisées au monde ». Il rajoute que cette si jolie fédération est fondée sur des principes de « démocratie et de libertés protégées par la Loi ». Je me demande si ce n'est que son sens de l'humour

ou davantage encore un amour aveugle pour l'Unifolié qui lui font dire de telles paroles. Aurait-il oublié les événements de la nuit des longs couteaux ? Ou la pendaison de Louis Riel ? Aurait-il oublié le traitement réservé aux Japonais pendant la seconde Guerre Mondiale ? Et que dire de celui réservé aux Autochtones ? Et que dire de l'ingérence du gouvernement fédéral dans des secteurs provinciaux comme la santé, l'éducation et les municipalités ? Ou des campagnes de propagande fédéralistes ? Tous ces événements contraires à la démocratie, tous ces efforts centralisateurs ne font que souligner le voile dont se dote M. Iacovelli lorsque lui vient le temps de qualifier son pays.

Je n'oserai pas prétendre que le Québec eut toujours les mains blanches dans ces événements, tout comme je ne prétendrai pas que le mouvement nationaliste n'a pas sa part de responsabilité dans la tendance centralisatrice du gouvernement fédéral – notamment à cause de la faiblesse d'anciens leaders du PQ, tel que Lucien Bouchard qui a réussi à saboter l'élan et la vigueur du mouvement souverainiste et qui n'a rien fait pour contrecarrer les campagnes de propagande fédéralistes, mais je ne peux qu'être sceptique quand on vante ainsi le Canada.

Sans même oser vouloir m'approprier les paroles du Professeur Tetley, je crois que des personnes comme M. Iacovelli réussiraient à comprendre la véritable nature du mouvement

souverainiste s'ils commençaient d'abord par constater les faits se présentant devant eux. Ils pourraient rapidement conclure que ce mouvement n'est pas le résultat d'une pensée nationaliste ethnique, ou la base d'un discours de confrontation, ou qu'il tend à exclure les autres. La compassion naît d'abord dans la capacité d'une personne à comprendre l'autre et à se mettre à sa place, et non dans les réflexes dépassés et les accusations gratuites. Grâce à cette compassion, des gens comme M. Iacovelli réussiraient à comprendre la légitimité d'un mouvement tel que celui auquel j'adhère, qu'ils soient d'accord avec ou non.

On a beau prétendre que « c'est à nous de faire en sorte que le Canada réussisse », cela n'empêche pas le fait que le Canada n'a pas réussi pour moi. C'est mon droit de m'exprimer en faveur d'un État souverain québécois et ce, peu importe le nombre d'attaques personnelles injustifiées et sans fondement que l'on dirigera contre moi.

M. Iacovelli, si vous voulez poursuivre votre « analyse » dans le Quid, vous êtes invité à le faire. Je n'ai que faire de votre guéguerre. ■

¹ Charles Castonguay. « La question linguistique : quelle est la force d'attraction réelle du français au Québec ? », *L'annuaire du Québec 2004*, Montréal, Éditions Fides, 2003, p. 251.

The Quid is also available online:
www.law.mcgill.ca/quid

And submit to the Quid!
The deadline is Thursday at 5pm.

quid.law@mcgill.ca

ATTENTION ALL STUDENTS!

THE CPO NEWSLETTER HAS MOVED TO THE WEB!

The Career Placement Office's weekly newsletter will no longer be sent out by e-mail, and will no longer be printed in the Quid. All News Postings, Job Listings and Events are now centralized on the CPO's website. For access, students should go to www.law.mcgill.ca/cpo, and click on CareerLink on the left-side menu.

CareerLink is organized into four primary areas:

Homepage – lists Student Alerts (brief, high priority messages), the most recent News Items and upcoming events.

News Centre – Contains postings with important information formerly included in the Newsletter.

JobBank – Contains all Job Listings received and posted by the CPO.

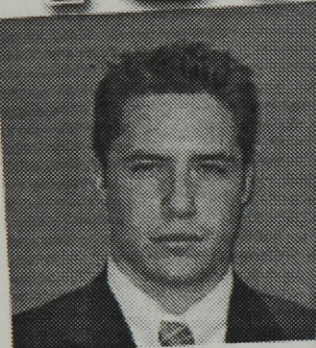
Calendar – Contains listings and details on upcoming CPO events.

Students are responsible for checking CareerLink listings on a regular (weekly) basis! With very few exceptions, notices will no longer be sent out by e-mail!

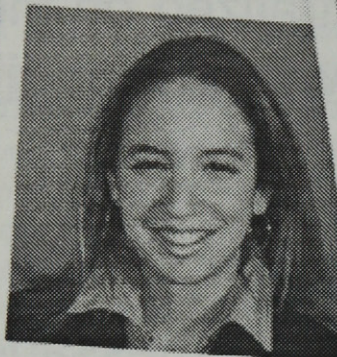
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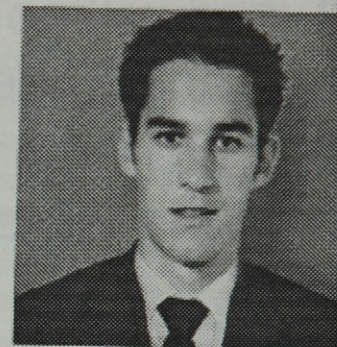
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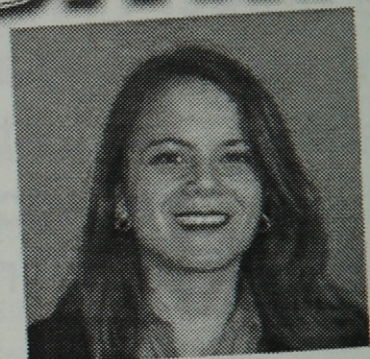
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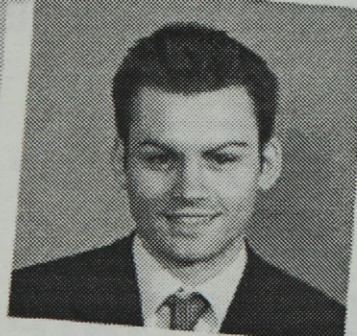


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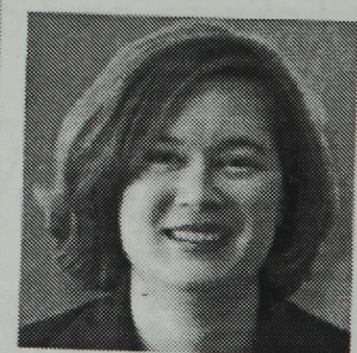
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